

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:03-cr-42-02

JOE CROFT,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

The Court has reviewed the Defendant's motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated for standard consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

Defendant's original Presentence Investigation Report attributed to him 3,959.25 kilograms

of marijuana equivalency. His original offense conduct resulted in a base offense level of 34, and a criminal history category of III. This Defendant received a two-level increase for the specific offense characteristic of possession of a dangerous weapon, pursuant to U.S.S.G. §2D1.1(b)(1). With the exception of a three-level reduction for acceptance of responsibility, no other enhancements or reductions were applied. His total offense level was 33 and his original guideline range was 168 to 210 months. On July 2, 2008, as a result of the 2007 United States Sentencing Guideline amendment, Defendant's base offense level was reduced by two levels, resulting in a new total offense level of 31. His corresponding guideline range was 135 to 168 months. His previous sentence was reduced to 135 months, with credit for time served.

During his period of incarceration since that time, the Court observes that Defendant has been sanctioned for possessing gambling paraphernalia. He has completed his financial responsibility requirements and the 40-hour drug education program offered by the Bureau of Prison. He has also obtained his GED and complied with the DNA collection program. Prior to his incarceration, this Defendant did not have any employment history. However, Counsel for Defendant represents that Defendant has served as the head orderly at FCI Yazoo City for the past six to eight months. By its written and filed response, the United States does not object to the reduction ordered herein.

Based on the foregoing considerations, the motion is **GRANTED**. The Court **ORDERS** that Defendant's base offense level be reduced by two levels, resulting in a new total offense level of 29 (based on 943.1 kilograms of marijuana equivalency). Given this total offense level and his criminal history category of three, Defendant's new advisory guideline range is 108 - 135 months. It is further **ORDERED** that Defendant's previous sentence be reduced to a period of one hundred

eight (108) months, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C). Lastly, the Court **ORDERS** that the Defendant shall reside at a Community Correctional Center, as deemed appropriate by the United States Probation Office, for a period of ninety (90) days upon his release from incarceration, as a modification of his conditions of supervised release.

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, to the United States Attorney, to the United States Probation Office and to the United States Marshals.

ENTER: November 15, 2011



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA